

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

HAROLD FRANKLIN OVERSTREET,

Plaintiff,

v.

**ALLSTATE VEHICLE AND PROPERTY
INSURANCE COMPANY,**

Defendant.

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CIVIL ACTION NO.: 4:20-cv-00242-A

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Defendant Allstate Vehicle and Property Insurance Company files this Motion for Summary Judgment and accompanying Brief in Support. Pursuant to Federal Rule of Civil Procedure Rule 56(a), Allstate seeks summary judgment on all of Plaintiff’s remaining claims based on the doctrine of concurrent causation.

I. SUMMARY

1. This lawsuit arises out of an insurance claim Plaintiff submitted to Allstate for coverage under his homeowner’s policy for alleged storm damage from a June 6, 2018 reported date of loss. Originally, Plaintiff alleged: (1) breach of contract; (2) violations of Texas Insurance Code Chapter 541; and (3) violations of Texas Insurance Code Chapter 542. On July 28, 2020, Allstate filed a Motion for Judgment on the Pleadings and Brief in Support [Dkt. 26 and 27]. On August 25, 2020, this Court granted Allstate’s motion in part [Dkt. 36]. Now, the only remaining claims are breach of contract and alleged violation of Texas Insurance Code Section 541.060(a)(7).

A. Elements to Plaintiff’s Breach of Contract Claim

2. The elements of Plaintiff’s breach of contract claim are: (1) the existence of a valid contract; (2) Plaintiff performed under the contract or tendered performance; (3) Allstate breached

the contract; and (4) Plaintiff suffered damages as a result of that breach. Allstate seeks summary judgment on Plaintiff's breach of contract claim as to elements (2), (3), and (4) on the basis of concurrent causation.

B. Elements to Plaintiff's Chapter 541 of the Texas Insurance Code (Statutory Bad Faith) Claim

3. The elements of Plaintiff's claims under Chapter 541 are: (1) Allstate committed one or more acts prohibited by Chapter 541; and (2) these acts resulted in actual damages to Plaintiff independent of the underlying breach of contract claim. Allstate seeks summary judgment on the remaining Chapter 541 claim on the basis that Plaintiff cannot prove Allstate owes him additional benefits under the policy due to his failure to segregate damages.

II. PRAYER

4. For the reasons stated above and based on the arguments set forth in Allstate's Brief in support of this Motion, Allstate respectfully requests that the Court grant its motion for summary judgment as to all claims asserted against it and for any further relief to which it may show itself to be justly entitled, whether at law or in equity.

Respectfully Submitted,

/s/ Susan E. Egeland

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served on all counsel of record in compliance with the Federal Rules of Civil Procedure on February 17, 2021.

/s/ Sara E. Inman

Sara E. Inman